IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 5 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BANAS OIL MILLS PVT LTD THRO' ITS PROP.LILADHARBHAI D ACHARY

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR BY MANKAD APP for Respondent -State.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/12/2000

ORAL JUDGEMENT

The original appellant of Criminal Appeal No.31 of 1999 decided by the learned Additional Sessions Judge, Banaskantha at Palanpur, has by filing this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short the "Cr.P.C.") challenged

correctness, legality and propriety of judgment Ex.6 dated 5/11/1999 rendered by the learned Additional Sessions Judge, Banaskantha at Palanpur (who will be referred to hereinafter as the leaned Appellate Judge) in Criminal Appeal No.31 of 1999.

2. The facts leading to this present Criminal Revision Application, in a nutshell, are as follows:-

On or about 19th March, 1999, Chief Supply Inspector in company of Supply Inspector paid a surprise visit to Banas Oil Mills Pvt. Ltd. which is a revision petitioner in this present matter. During the course of visit, the Supply Inspector found certain irregularities as alleged by the State Government. On that day, certain articles were seized under seizure memo dated 19th March, 1999 (Annexure : A). The Supply Inspector had taken a sample of rapeseed refined oil. It was sent to Assistant Commissioner, Drugs & Food Office at Palanpur for analysis. The present revision petitioner made a representation by his letter dated 26/3/1999 to the District Supply Officer, Office of the Collector, Palanpur. Thereafter the District Supply Officer issued a show cause notice to the present revision petitioner on 19/6/1999 at Annexure : C. The present revision petitioner, by his reply dated 6/7/1999 at Annexure : D gave a reply to the aforesaid show cause notice. Thereafter, the District Supply Officer passed an order dated 21/7/1999 at Annexure : E and by that order, he passed an order under Sec.6A of the Act, and ordered to confiscate rapeseed refined oil of quanity of 18 Quantal -28 Kilogram - 200 Grams total worth Rs.56,668/-.

3. Being aggrieved against the said order of confiscation of goods, the present revision petitioner preferred Criminal Appeal No.31 of 1999 to the Sessions Court, Banaskantha at Palanpur. The appeal memo is at Annexure : F. The learned Additional Sessions Judge, Banaskantha at Palanpur after hearing arguments of the learned advocates for both the parties and after perusing records and proceedings of the case which was before the District Supply Officer, Palanpur rendered his judgment Ex.6 on 5th November, 1999 and by that judgment, the appeal preferred by the present revision petitioner was dismissed.

4. Being aggrieved against the dissatisfied with the said judgment Ex.6 dated 5th November, 1999 rendered by the learned Additional Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No. 31 of 1999, the appellant of that appeal has preferred this Criminal Revision

Application.

5. Heard Shri H.R.Prajapati, the learned advocate for the revision petitioner and Shri B.Y.Mankad, the learned APP for the revision opponent State. I have examined the impugned judgment of the learned Additional Sessions Judge, Banaskantha at Palanpur which is challenged in this Criminal Revision Application. I have perused the documents produced at Annexure : A to Annexure: F.

6. Shri H.R.Prajapati, the learned advocate for the revision petitioner has argued that there is a reference of the statements of six witnesses having been recorded on 23rd March, 1999 in the order of the District Supply Officer at Annexure : F. There is also a reference of statements of 10 witnesses having been recorded in the inquiry before passing aforesaid order dated 21st July, 1999 of the District Supply Officer. He has strenuously argued that copies of such documents have not been given to the revision petitioner. He has further argued that facts with regard to such statements having been recorded are not disclosed in the show cause notice Exh.10, and therefore, the revision petitioner could not make his representation properly for want of copies of statements of such witnesses. He has further argued that looking to the impugned order dated 21st July, 1999 of the District Supply Officer, a sample of rapeseed refined oil was sent to the Laboratory for analysis and the District Supply Officer has relied on the report of analysis received from the Laboratory. He has further argued that no copy of report of analysis has been furnished to the revision petitioner. He has further argued that for want of such important documents, the revision petitioner could not make proper representation in reply to show cause notice issued by the District Supply Officer, and therefore, the impugned order dated 21st July, 1999 which is at Annexure: E is not legal one and it requires to be set aside. He has further argued that the learned Appellate Judge has not considered this fact. In support of his argument, he has cited an authority of KIRAN OIL INDUSTRIES VS. DISTRICT COLLECTOR, JAMNAGAR, reported in 1996(1) GLH 614 wherein it has been observed in Para 3 as follows:

" It is evident from the impugned orders that the defences raised by the petitioner have not been considered by the concerned authorities. Under Section 6B of the Essential Commodities Act, 1955, a reasonable opportunity of being heard is required to be given before making any order

> confiscating any essential commodity under Section 6A of the Act. Such reasonable opportunity follows the show cause notice informing the person from whom the commodity is seized of the grounds on which confiscation is proposed. It, therefore, follows that any material on which reliance is to be placed must be disclosed to the person on whom show cause notice is issued, to enable him to have an appropriate opportunity of being heard in the matter. It is also incumbent upon the authorities to look into the defence raised by the petitioner with a view to come to the conclusion whether confiscation would be justified or not. Therefore, where preliminary statements are recorded at the time of raid and thereafter, show cause notice is issued under Section 6B, all that material which the authority may rely upon is to be again put to the person concerned to enable him to defend himself in the matter".

7. In view of aforesaid legal position with regard to Section 6A of the Essential Commodities Act, 1955, the District Supply Officer has not given a reasonable opportunity by supplying the copies of the statements of witnesses whose names are referred to in his order at Annexure : E. Admittedly, copy of report of analysis is also not furnished to him.

8. Under the circumstances, the impugned order which was challenged in Criminal Appeal No.31 of 1999 before the Appellate Judge is exfacie illegal and it requires to be set aside.

9. In view of what is stated hereinabove, this Criminal Revision Application deserves to be allowed, and accordingly it is allowed subject to certain directions to be given to the concerned authority. The order dated 21st July, 1999 passed by the District Supply Officer, Banaskantha at Palanpur in respect of case of the present revision petitioner (Annexure : E) and judgment Ex.6 dated 5th November, 1999 rendered by the learned Additional Sessions Judge, Banaskantha at Palanpur in Criminal Appeal No.31 of 1999, both are set aside. The District Supply Officer is directed to hold a fresh inquiry for passing order under Sec.6A of the Essential Commodities Act, 1955 as per the directions given by this Court in case of KIRAN OIL INDUSTRIES (Supra) and thereafter he may pass appropriate order under Sec.6A of the Act strictly on merits and in accordance with law

after affording full opportunity of being heard to both the parties, without being influenced by order of this Court. Rule is made absolute accordingly.

Date: 26/12/2000. (H.H.MEHTA,J.)
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